

APPROVED: 9/21/15

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
JULY 20, 2015**

A Regular meeting of the Zoning Board of Appeals was held in the Town Hall, Highland Falls, New York, on Monday, July 20, 2015, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

Tim Doherty, Chairman
Ray Devereaux
Tim Donnery
Tony Galu

Absent

Jack Jannarone, Deputy Chairman

Alyse Terhune, Attorney, (Lewis & McKenna)

ALSO PRESENT: Jack Gafford, Development Director, Old Guard Hotel, Jeff Millman, Annie Scott, David Getz, Konstantino Fatsis, Dilip Patel, Rakhil Patel, and Jim Ramus, and Jack McCarthy.

MR. DOHERTY: Today is the July 20th. All members are in attendance with the exception of Jack Jannarone. We have Minutes of March 16, 2015, June 15, 2015, and June 29, 2015.

A motion was made to approve the March 16, 2015, June 15, 2015, and June 29, 2015 Minutes.

Motion: Mr. Donnery Seconded: Mr. Devereaux Approved

MR. DOHERTY: The first applicant on our docket is the Old Guard Hotel.

MR. GAFFORD: We will defer to McCormick application.

MR. MILLMAN: Thank you.

At 7:03 P. M., the Public Hearing was opened for the property belonging to Karen McCormick located at 37 and 39 South Street in the Village of Highland Falls.

MR. MILLMAN: My name is Jeffrey Millman, Esq., of the law firm of Phillips and Millman, located at 148 South Liberty Drive, Stony Point, NY. We represent

the Applicant, Karen McCormick, the owner of both properties of 37 and 39 South Street respectively.

We have an Affidavit of Mailing we had forwarded to the Municipality, as well as the posting.

MR. DOHERTY: Yes, I have the Affidavit of Mailing and the Affidavit of Posting and newspaper publication. Mr. Millman, will you go over again for us what we are looking at here regarding this application.

MR. MILLMAN: Yes, thank you, Mr. Chairman. I heard one comment before as one of the Members was looking at the plan that we have before the Board indicating that there are quite a few lines here. Essentially, it is a simple project. We are looking to do lot line changes here. We have two pieces of property which are pre-existing non-conforming R-4 Zone properties in the municipality. We have 37 which is a two-family detached dwelling, and we have 39 which is a single family detached dwelling. By changing the line, what we are doing is we are bringing into the Lot #2 which is 39 the deck, and we are giving more property to 37. Essentially, in order to do that, since we have pre-existing non-conformity here to begin with, we are seeking variances so that we can go to the Planning Board to effectuate our lot line changes.

With respect to Lot 37, we need variances for lot area, which is basically less than a 10% variance. We need a lot width, a front yard, a side yard, and a rear yard variation on that lot.

With respect to Lot 39, which is a single family detached dwelling, we need less variances. We need front yard, side yard, and total yards, as well as lot coverage. Those are the variations that we are seeking.

In reviewing the statute with respect to the impact on the community, I would suggest to the Board that there will be no undesirable change to the community with respect to these changes that we are seeking. It is a conformity with other non-conforming lots within the community as well.

With respect to the issue of self-created, I believe my law partner was here last time. He may have spoken to the ZBA. The deck that really brings the request for the lot line changes into the Planning Board was created based upon my client, Ms. McCormick's conversations with the then-Building Inspector, who made a determination that it would be a permitted deck based upon the size and location. Unfortunately, due to that condition, we have it straddling lot lines.

So either she demolish what she has on the property or the municipality allows us to do the lot line change to allow the single family dwelling to keep what it has and the two family to gain some more yardage.

MR. DONNERY: So you're saying this goes in front of the Planning Board for the lot line change?

MS. TERHUNE: The Planning Board grants a subdivision, but in order for the Planning to grant a subdivision, which affects the lot line change, they have to have variances because the Planning Board cannot create a nonconforming lot.

MR. DONNERY: They are basically okay with it then, it sounds like.

MR. MILLMAN: If I may, we haven't gone there yet. It is like the cart before the horse type thing. What we are looking to do is get the necessary variances. Once we get the variances, we will then go before the Planning Board showing a cleansed two lots with our plan of the lot line change or shifting. We expect to have the public hearing there, follow whatever guidelines that they are asking us to follow, and hopefully get our approvals.

MS. TERHUNE: An applicant for area variances can essentially skip the Planning Board and come directly to the Zoning Board of Appeals. If they were requesting a use variance, they would have to be referred by the Planning Board or the Building Inspector.

MR. DONNERY: I find everything okay, I know the area, and have no objection.

MR. DOHERTY: Does anyone from the public have any comment on this application of either 37 or 39 South Street in the Village of Highland Falls?

MS. TERHUNE: Pursuant to opening the public hearing.

MR. DEVEREAUX: A comment concerning 39, it talks about a variance required of 17 feet. They have 17 feet more than they need.

MS. TERHUNE: You mean the lot area percentage? That is a lot area coverage.

MR. MILLMAN: If I may, we are 17% over the requirement for lot area coverage. I know when you see the higher number, you think that it suffices, but the way that your Code reads, 35% of the lot can have coverage without a variance.

At 7:08 P. M., a motion was made to close the Public Hearing.

Motion: Mr. Donnery Seconded: Mr. Devereaux Approved

MR. DOHERTY: What we are going to do is discuss both 39 and 37 as we go down and then we will make an approval together. The approval will be for both properties.

39 South Street Highland Falls	Zoning Requirement	Existing Condition	Variance Required
Lot area percentage of total lot – main and accessory buildings	35	52	17%
Front yard setback	20 feet	1.4 feet	18.6 feet
Side yard setback	8 feet	0	8 feet
Total for both side yard setbacks	18 feet	4 feet	14 feet
Rear yard setback	25 feet	0	25 feet

37 South Street Highland Falls	Zoning Requirement	Existing Condition	Variance Required
Lot area- minimum square footage	6,000 feet	5,049 feet	591 feet
Lot width	50 feet	32 feet	18 feet
Side yard setback	8 feet	3.4 feet	4.6 feet

BOARD DISCUSSION:

MR. DONNERY: This would be after they get Planning Board approval.

MS. TERHUNE: The reason it needs 6,000 square feet is because it is a multi-family dwelling.

MR. MILLMAN: The back corner lot. The existing lot, as it is now, is 5,073. By us doing the lot line changes, we are adding approximately 400 square feet to the lot, reducing what the required variance would be.

MR. DONNERY: Very good.

MS. TERHUNE: They are reducing the non-conforming.

MR. DONNERY: The best they can, which is nice.

MR. MILLMAN: Thank you.

MS. TERHUNE: Without making the other lot non-conforming.

MS. TERHUNE: That is measured back from the front line, so they are measuring this portion of the lot that is why they need that variance. The width is measured at a certain distance from the front of the house.

MS. TERHUNE: Questioned the side yard variance. (Referring to the plans).

MR. MILLMAN: If you see the red that is the building envelope, based on the size of the lot, I think it is a physical impossibility to conform on this lot based upon that envelope. The measurement, if you look to the right, is where they have the 3.4 feet.

MS. TERHUNE: On a corner lot you need a total combined of 20 and 8. So he needs 28. Referring to the plans, what he has measured here is, he is giving the Board 4.9 which is 1.5 on this side and 3.4 here. That is all they have, so he needs a 23.1 foot variance. Again, these are pre-existing, non-conforming buildings.

MR. DEVEREAUX: In the footnotes, it says one side yard shall be 8 feet wide and the other a minimum of 10. That's 18, collectively.

MS. TERHUNE: Yes, but if you look at abutting side yard, side street on corner lot it's 20 feet.

MR. MILLMAN: For total?

MS. TERHUNE: Yes, for total.

MR. MILLMAN: We don't need a variance for that. The variance that we needed was the initial side yard (provided 3.4 when the requirement was 8). When you take the two sides collectively, we are okay.

MR. DONNERY: On the corner lot we are saying that South Street is the front.

MR. DOHERTY: Yes. I think we touched on that last time and we agreed that the front was South Street.

MS. TERHUNE: Right, we did. In looking at this it seems to be that the total combined is 20, and I am not sure why it is 20 plus 8.

MR. DOHERTY: That's why I mentioned it. It doesn't seem to jive.

MR. MILLMAN: I don't know if it is 20 plus 8, I think its side is 8, but a combined of 20. You don't add them.

MS. TERHUNE: So you need...

MR. MILLMAN: The initial side yard is 8 and we provide 3.4, so it's the 4.6. 3.4 clear is what we have on the bottom.

MS. TERHUNE: The total would be 20, so you need 14.1, correct?

MR. DOHERTY: No, it would be 15.1, correct?

MR. DEVEREAUX: You are right, Tim.

MS. TERHUNE: That is what you need 15.1.

MR. DOHERTY: If anyone wants to amend that on the application, the variance is actually 15.1.

MR. MILLMAN: I would ask that it be amended.

MS. TERHUNE: If that's okay, rather than making him come back.

MR. DOHERTY: Is that okay with everyone?

MR. DONNERY: That sounds better than 23.1.

MR. DOHERTY: Yes, it just caught my eye. John will amend that and it will be submitted.

MS. TERHUNE: It will get amended so that in the record it is 15.1.

MR. DOHERTY: Is everyone okay with that section?

MR. DONNERY: That's fine with me.

MS. TERHUNE: They are also asking for the shed.

MR. MILLMAN: Yes, the shed is located on the upper left-hand corner of Lot 37.

MR. DOHERTY: I was under the impression that a shed could be dropped pretty much anywhere as long as it is less than 10 by 10.

MS. TERHUNE: I am not sure you need this.

MR. DOHERTY: Do you know the actual size of that shed, do you?

MR. MILLMAN: I actually don't. If it is 100 square feet or less then it would be exempt.

MS. TERHUNE: Maybe it is bigger than that and that is why they are asking for the variance.

MR. MILLMAN: Mr. Phillips, my law partner, is the one that prepared it and he was aware of the 10 by 10 requirement.

MR. DOHERTY: I would be under the assumption that he knows that it is larger than the 10 by 10.

MR. MILLMAN: If for some reason it is smaller, I would write a letter and ask that if it is approved, we could maybe redact that requirement so it does not run with the land. But as far as the size, I would ask that it be heard with the belief that it is greater than 10 by 10.

MR. DEVEREAUX: That is a good sized shed.

MR. MILLMAN: It could be an 8 by 12 or 9 by 12.

MS. TERHUNE: One of the things that applicants like to do especially if they are trying to sell a lot, is that there is absolutely no question that it conforms with the Zoning Law, either through conformance or variances. That may be why they are asking for the variance just clear up any problem that might be uncovered in a title search or a Building Inspector review. I also think John Hager went over this with the applicant, so Building Inspector may have determined that a variance was required.

MR. MILLMAN: Mr. Phillips and Mr. Hager did meet and there was an amended application before it was ultimately submitted, and they did go over each of the requests for variances. With that, Mr. Chairman, I would request that the Board take action as if this shed were of legal size for the purposes of required variation.

MR. DOHERTY: On scale it is 8 by 13.

MR. MILLMAN: 104 approximately.

MR. DOHERTY:

Variance Requested	Zoning Requirement	Existing Condition	Variance Required
Shed	20 feet	4.3 feet	15.7 feet

Any questions or comment from anyone?

MR. DONNERY: We are going off of what John Hager recommended. He must have seen something that you and I didn't. Tony and I were under the impression that it was a temporary shed and it would be exempt, but John must have seen that it required a variance.

MR. DOHERTY: I think he picked up on the square footage of it.

MR. DONNERY: And there might be a concrete floor in there, too. That brings it into a permanent structure.

MR. DOHERTY: I will go down the list of the Balancing Test for an Area Variance for this application and we will rule on these two as a whole.

- **Whether benefit can be achieved by other means feasible to applicant**

MR. DONNERY: They did show that they moved some lines around and hired this firm to bring it all in to the best that they could. I would say okay on that.

MS. TERHUNE: They could not be granted the subdivision without these variances. They could play with the variances one way or the other a little bit, but ultimately, the Planning Board would not be able to grant a subdivision without variances from the Zoning Law. I don't know of any other means it could be done.

MR. DONNERY: Right. That is what I am saying, they moved things around here, and they are trying their best.

MR. DOHERTY: They did due diligence.

- **Undesirable change in neighborhood character or to nearby properties**

MR. DOHERTY: Personally, they are not actually changing anything structurally. Those properties have pretty much been that way before I even showed up.

MR. DONNERY: Many years.

MR. DOHERTY: That is a nice way of putting it. Thank you.

- **Whether request is substantial**

MS. TERHUNE: I would say that the request is pretty substantial. But it is what it is.

MR. MILLMAN: If I could just offer, when you have a pre-existing non-conforming lot like this and the structures are pre-existing, in order to make it the best scenario for two lots you could make an argument of substantial or bringing it into best conformity it's not as substantial as leaving it in an adverse situation. You have a deck here that was placed here with the Building Department's approval which helped create some of this condition, pre-dating everyone here. I think the applicant, not due to her own doing but with the guidance of the municipality, was given this situation. I would ask you consider that not be a criteria to block a variation.

MS. TERHUNE: Well, it is a criteria but it doesn't, just because it is substantial, under all the facts and circumstances, preclude you from granting the variances. As the applicant's attorney mentioned, these structures are here and it is not as if granting these variances is going to necessarily do any other harm either to the environment or the neighborhood. If they weren't pre-existing, if they were

doing this so that they could put a new structure on either one of these lots, you would be in a different situation in terms of the Balancing Test.

MR. DOHERTY: Is everybody okay with that? Clear?

- **Whether request will have adverse physical or environmental effects**

MR. DOHERTY: Environmental I don't see. On the physical, they are not really changing the structures at all.

MS. TERHUNE: They are not changing the structures. They are intensifying the use. They are not affecting the use at all. They are simply dividing the lots. If someone were to buy one of the lots and then want to build a new house, tear down an old house, or do something else on the lot, they would go through the Building Department and be subject to all the permitting requirements they would be subject to in any case.

MR. DOHERTY: Is that clear?

MR. DONNERY: Yes.

MR. DOHERTY:

- **Whether alleged difficulty is self-created**

MR. DOHERTY: The self created is kind of a hard call. Again, these structures have been here for quite some time. The approval of that deck, when it was put on, created or made it more difficult.

MS. TERHUNE: Made it more difficult.

MR. MILLMAN: In 1992, with Building Inspector Woodruff.

MR. DONNERY: How would we word that one?

MR. DOHERTY: Politically correct.

MS. TERHUNE: The fact that the applicant wants to subdivide, you could say that it was self-created. But again, it is not as if there is anything or any material change that is going to result from the subdivision. They are recognizing that they need variances and they are asking the Village Planning Board.

In villages that are long standing and have been around a very long time, it is not unusual to find, to walk through any village like Highland Falls or any other village that has been around forever, and find lots and lots of non-conformity. To apply the zoning standards too rigidly in that kind of environment often leads to

much greater hardships on the property owners and, ultimately, the village itself than to have some flexibility. That is why you have a Zoning Board of Appeals made up of people who have been here and who know the environment and are the best people to determine whether or not a particular variance will have a material effect on anybody. If you decide that it isn't, then just because it may be perceived as self-created, doesn't necessarily mean that the variance should be denied, unless you can find reasons why it should be denied, which I have not heard.

MR. DONNERY: I am not saying it for denial purposes, I am just saying for wording purposes for the approval. How do you word it?

MS. TERHUNE: Generally, when you have granted these types of approvals in the past, you acknowledge that perhaps it is substantial, perhaps it is self-created; however, there aren't any material reasons not to simply acknowledge a pre-existing condition. I would not worry about a challenge, if you decide to approve these variances.

MR. DEVEREAUX: Apparently, the Building Inspector was complicit. Do we have any documentation to prove that or just word of mouth, or hearsay?

MS. TERHUNE: Well, the deck is there.

MR. DEVEREAUX: I know that, but I am just saying to see what he approved 20+ years ago. We have to take them on face value and say that it happened, and it is what it is. I don't see a problem with it. How to write it up is up to you.

MS. TERHUNE: Also, remember that if any changes have to be made to these structures that are substantial, if the deck were to be removed or replaced or something like that, they would go through the Building Department permitting process. At that time, the new Building Inspector may say, "well, you know, now you are making these big changes, let's provide a little more room between the buildings." They can do that under their own authority.

MR. DONNERY: I am happy with that.

MR. DEVEREAUX: A very harsh rating if they are going to tear down the deck. But we are not going there.

MS. TERHUNE: Well, you could not grant the variances. You could say that the deck should not have been there in the first place, and we are not going to grant that much of a variance. You could also condition the variance on where these are zero lot line changes that on any future construction you could condition it to the existing building as it is. That is really what you are granting the variance for. For any change in the future then it is not necessary that this variance would just flow with the land forever it is really very specific to the building conditions that are there now.

MR. MILLMAN: If I may I be heard briefly. What Counsel is saying I do understand; oftentimes there are conditions placed. I would ask though that with respect to any conditions, obviously if there is casualty to the building, damage or loss due to fire, they would be able to reconstruct as per the variance, if it is granted, if they need to do repairs. Obviously, if they do any enlargements, then that is outside of the scope of what they are receiving. Of course they would have to go through the Building Department no matter what, and they would govern what they can and cannot do.

MR. DOHERTY: I would say that in relation to that is the way the Code reads if it is damage by fire and more than 60% of the structure, you have to start all over and build a whole new building.

MR. MILLMAN: If the variance exists, then the setbacks that you approve would run with the land.

MS. TERHUNE: That's true, and what I was saying is, if you feel that the zero lot line condition is too substantial, you could either deny it or condition the approval. For example, if the deck is ever reconstructed, for any reason, you can't make it any bigger, but if someone would like to put a whole new deck on because this one is shot, then I think you could condition it on some kind of setback.

MR. MILLMAN: No, you can't make it any bigger. Again, if I could just comment on that: If you have a deck that you approve, and if you feel that it warrants approval, and I suggest that it does warrant approval, in time to replace just a board here or there, just to avoid losing what you are receiving tonight, I would ask that you not put the condition on it.

Over time, whoever the homeowner is, whether it is Ms. McCormick or somebody else, they want to put something in the exact same footprint that you are approving, but something safer, something up-to-date, because over time wood does go through its changes and becomes unsafe. Out of fear of losing what is being received tonight, I would ask that a condition not be placed on it. Of course, no enlargement can happen, but if you are going to approve it, approve it.

MS. TERHUNE: The alternative is to not approve it.

MR. MILLMAN: No, of course. I am not trying to talk my client's approvals out, I am just trying to forecast down the road. It was mentioned earlier, if there is ever a resale, when someone buys, you have an attorney on the other end reading your decision saying to that person saying "That deck does needs work. You may not want to buy this house because if you buy this house you will lose that deck if you do any work there. I am just trying to protect Ms. McCormick's future.

MS. TERHUNE: I understand what you are doing and typically variances will, as long as the structure is there, it is a variance and it has been granted and they can rebuild it right to the lot line.

MR. DOHERTY: Anything that would inhibit that from happening is if they made it larger.

MS. TERHUNE: Or, if they tried to make a two-layered deck. I think it is just a one-layered deck.

MR. MILLMAN: Yes, it is. A two-layered deck, in my opinion, would trigger an enlargement that would be beyond the scope of a variance.

MS. TERHUNE: This Board has ruled likewise that, if you go up in a non-conformity, it triggers the variance, even if it is pre-existing. I think that would happen anyway. I think it is up to the Board to decide if they are really concerned about bringing that deck to the lot line or, if that is something that should be left to the buyers, who say, "I'm not going to buy it because the deck is right to the lot line."

MR. DOHERTY: If there should be approvals, what would the actual wording of the condition be?

MS. TERHUNE: Well, the Applicant is suggesting no condition. I am suggesting that it is possible that you could formulate a condition that, if there was a substantial change in the deck, like a whole new deck.

MR. DOHERTY: Like a resurfacing?

MS. TERHUNE: No.

MR. DOHERTY: I guess that is like putting a new roof on your house.

MR. DEVEREAUX: Or a total replacement?

MS. TERHUNE: I think that it would have to be something like a total replacement of the entire deck. It doesn't mean that you can't repair it. What the applicant is saying is what if you do want to replace it with newer deck materials, more modern deck materials, does this Board want to inhibit that, maybe not.

MR. DOHERTY: I go back to fact that if this is all pressure treated and somewhere down the line the new purchaser wants to put compost materials down on it. If the deck stays the same footprint then everything is the same.

MR. DOHERTY: It all stays the same, as long as they don't want to screen it in.

MR. MILLMAN: Screening it in would be a material change.

MS. TERHUNE: Or making it another part of the house. Now it is not a deck. So the condition would be that it is specific to the deck and not to the house. You could not build the house out to cover the deck and enlarge the house.

MR. DOHERTY: I can't see how any approval or disapproval superseding putting a bump out on the house.

MS. TERHUNE: And I am sure the Building Inspector would say "no." They would be right back in front of the ZBA. That's the way it has been in the past with other decisions that have been made.

MR. DOHERTY: Even ten years down the line, whether we are here or not, bringing the house that close to the other house there is going to be issues.

MS. TERHUNE: Exactly. I think the only condition would be specific to a deck.

MR. DOHERTY: The existing deck of 39.

MR. DEVEREAUX: Tim, I think it met all the tests essentially. You can argue all night. I just sense that the applicant has a reasonable request and I think we ought to move on.

MR. DONNERY: I agree, just the wording of the approval.

MS. TERHUNE: You mean as to the deck?

MR. DONNERY: Yes.

MS. TERHUNE: I will structure it that it is specific to the deck and the plans that were shown to the Board. Every time you grant a variance, it is specific to the plans that are before you. It doesn't mean that you can build a house all the way to the lot line. It will be very specific to the deck.

MR. MILLMAN: Thank you.

MR. DOHERTY: Again, we will do that one condition with the caveat to 37 that we changed it to 15.1 for the total side yards.

MR. DONNERY: And I put a % sign for the 17 feet – it should be 17%.

A Motion was made to approve the variances on this application with a caveat that on 39 South Street changing the lot percentage to indicate that it is 17%. On 37 South Street, the total for both side yards be amended to state 15.1 feet being the variance required for the side yard setbacks.

**Motion: Mr. Doherty Seconded: Mr. Devereaux Approved,
With a Roll Call Vote:**

Mr. Galu	-	Aye
Mr. Devereaux	-	Aye
Mr. Donnery	-	Aye
Mr. Doherty	-	Aye

MR. MILLMAN: I want to thank you very much.

MR. DOHERTY: Good luck to you.

At 7:50 P. M., the Public Hearing was opened for the Old Guard Hotel, Applicant, Churchill Properties.

MR. DOHERTY: Gentlemen, could you state your names for the record, please.

MR. JACK GAFFORD: I am Jack Gafford. I legally reside in California; temporarily residing here.

MR. DAVID GETZ: I am David Getz, of Lehman and Getz Engineering, of Warwick, NY.

MR. DOHERTY: For the record, I have a copy from the Orange County Department of Planning for the 239 Application with the County's determination of a local determination. I also have Affidavits of Mailing, Postings, and Newspaper listings. Would you go over what you are looking to do for the property.

Mr. Gafford, raise your right hand, please. Do you swear to give all the information as truthful and accurate as you possibly can for this application?

MR. GAFFORD: I so do swear.

Our application is to take the lot owned by Frank Lilos, purchase it and combine it with our lot. First of all, that is the grand sense. In that restructuring of the property we have changed the shape of the building, made it narrower from the standpoint of somebody looking at it from Highland Falls or across the river by about 122 feet. We have taken off a floor, so the height of the building drops 10 feet. In looking at the variances that we were issued, we went through them and determined that there was one variance that had to be increased, whereas, most of the others I believe were actually decreased and their non-conformity was lessened.

I think with this plan we have a better site, a less congested site. We have better leeway around the building and the parking spread out. We have increased the parking spaces that will allow us to increase the rooms. I believe the count will be 126. We will come back with a final number. Some of the confusion is that we can count rooms. Some of the rooms are double or suites. The same thing happened in the previous application. We had 118 and 120. It was finally reduced to 114. We have a very similar situation here, but we will get a final count based on which rooms are going to be suites and which are not. The suites will be a single-family occupancy. It wouldn't be two families.

I think lowering the building is going to help. It will help for fire safety. Now both fire departments can serve it. We have a much better site and a much better condition.

MR. DOHERTY: Just for the record, when you came before us previously, we had discussed the concerns of the height of that building with the local fire department. They reviewed it and they were comfortable with their apparatus being able to tend to it should something should occur.

MR. DONNERY: Right, we had Fort Montgomery and West Point. We still have that available to us.

MR. GAFFORD: But you did not have Highland Falls.

MR. DOHERTY: They were part of the discussion. They don't have the apparatus or a ladder truck.

MR. GAFFORD: So we recomputed all the variances, and the one variance that is increasing is the setback to the south boundary or to the zoning lot line. Both are considered to be the same variance. That was the main issue, in coming up with a 29 feet variance.

MR. DONNERY: Right, but we discussed your whole building is in B-2 even though you are closer to R-3, the building itself never encroaches into R-3.

MR. GAFFORD: That is correct.

MR. DONNERY: That's fine.

MR. GAFFORD: I did read your letter, and yes, we are asking for a conditional approval subject to the fact that we purchase the Lilos' lot and then combine it.

MS. TERHUNE: Will you be able to do that quickly before the Planning Board needs to take action?

MR. GAFFORD: I would say in a month and a half. There are a couple meetings with the Planning Board we are going to go to and not request anything but

inform them of the upcoming changes. I am concerned about doing it right and in the right order.

MS. TERHUNE: Just for the Board's edification, when we looked at this, the Lilos' lot is really a parking lot and that is not a permitted use in B-2. It is not an accessory use because the primary structure is the hotel. In my opinion, the ZBA can grant a conditional approval for the variances, but condition it on that lot as purchased and combined. You really don't need a parking variance. Otherwise, you would need a use variance and that would be a much more difficult and hair-raising experience. It is also my opinion that the Planning Board cannot grant a site plan approval in special use permit on a conditional ZBA variance. So, that will have to be completed before the Planning Board takes action so the conditional approval now becomes final.

MR. GAFFORD: That is understood.

MR. DONNERY: Once again, it comes down to wording of it.

MS. TERHUNE: Yes, I will make that very clear. The other question that I had is the restaurant. Is there a separate public restaurant, is there a banquet hall, and is there enough parking to accommodate the restaurant?

MR. GAFFORD: There was always a restaurant in the hotel.

MS. TERHUNE: And the parking calculations accommodate one parking spot for four seats. I am just curious because I couldn't tell how big that restaurant is.

MR. GETZ: I don't have the Planning Board plans. We will add those statistics to the plans, but based on the previous plan, the restaurant has 120 seats, and like you said, we showed one space for four seats, so 30 of the parking spaces account for the restaurant.

MS. TERHUNE: So including the Lilos' property, you are well within the requirements.

MR. GAFFORD: We have 215 spaces. We will go back and on the next iteration of these plans, state exactly how many seats we have, exactly how many rooms, and staff spaces. 215, I am fairly certain is within all those requirements.

MS. TERHUNE: Yes, likely.

MR. DOHERTY: Gentlemen, do you have any questions?

MR. DONNERY: No. We will just run down each one?

MR. DOHERTY: Does anyone from the public have any comments on this particular application?

MR. KONSTANTINO FATSIS, 6 Firehouse Lane, Highland Falls. Not so much a comment but I wanted to ask what that one variance was that increased. I am a little unclear.

MR. GAFFORD: Please come up. **Showing the plans, it is this corner** - the previous footprint was skinnier and as you ran this line down, it was about 20 feet away, now it is 1 foot away.

MR. DONNERY: They are still on their property; they are not encroaching on anyone else's property.

MR. FATSIS: I just wasn't sure. Are any of the variances on this side?

MR. GAFFORD: No, these walls have stayed in exactly the same place. There is no change in variances on these. It is just this corner right here.

MR. GETZ: In general, the walls have stayed the same but have gotten smaller in height than on the previous plan.

MR. FATSIS: I just wasn't sure. Thank you.

MR. DOHERTY: Certainly. Thank you. Anyone else?

MR. ED ROSE, 7 Park Place, Highland Falls, in the Roe Park Area. One street removed from Mearns Avenue. I had some general concerns with the re-design, not understanding the picture. How close the designed parking lot will be to the properties on Mearns Avenue for the neighborhood that will change if they have a parking lot in their back yard. **Mr. Rose came up to review the plans.**

MR. GAFFORD: This wall never changed. As a matter of fact, we brought it in closer. Actually, we brought the parking in closer to the building. We have taken a level off making it a little shorter and fatter.

MR. ROSE: You lost rooms with that?

MR. GAFFORD: No, rooms went up by about 10.

MR. ROSE: Just by re-sizing?

MR. GAFFORD: Right, and double loading.

MR. GETZ: And adding this property here.

MR. GAFFORD: It allowed us to re-densify the parking so it wasn't jammed up.

MR. ROSE: This parking is along Route 9W and further removed from Mearns for the neighbors on Mearns.

MR. GAFFORD: Yes. So you will have less of a profile. Remember how we did those profiles? It will be shorter and squatter.

MR. ROSE: Is there a requirement here to change the gradation at all and bring in fill to make this level? What kind of environmental impact do you have here in this area by putting cars on it?

MR. GAFFORD: The same as this. This retaining wall now instead of stopping right here, has been extended to go this way.

MR. DOHERTY: It will carry on through the whole area.

MR. ROSE: So, from here to here is new retaining wall? How many feet is that.

MR. GAFFORD: It's about 300. It is further in to Route 9W.

MR. ROSE: So natural screening from the retaining wall will provide noise reduction from the highway and across below in the park. Right now, the one exposure area that you see when you come up Walnut Avenue is where there was some clearing done of the bank where the residential property is.

MR. DOHERTY: Are you speaking of Lilos' house?

MR. ROSE: Yes, behind there. That is the exposed area.

MR. GAFFORD: When you come up Route 9W you see the Lilos' house and you see nothing here. Now you will see some screening.

MR. ROSE: That is a positive direction. Thank you.

MR. DOHERTY: Thank you. Anyone else?

MR. JACK McCARTHY, 55 Mearns Avenue, Highland Falls. I would like to take a look.

MR. DOHERTY: Come on up.

MR. McCARTHY: This is where we stopped before and now we are coming to here?

MR. GAFFORD: That is correct.

MR. McCARTHY: And there is a house being taken down here?

MR. GAFFORD: Yes, and more screening.

MR. McCARTHY: And there will be more screening here. This is just going to be parking lot?

MR. GAFFORD: Yes, sir. No structure.

MR. McCARTHY: Just structure. No pool?

MR. GAFFORD: No pool, no spa. You can't do your nails there.

MR. McCARTHY: Okay. Thank you.

MR. DOHERTY: Anyone else? Thank you for your comments.

A motion was made at 8:06 P. M., to close the Public Hearing.

**Motion: Mr. Devereaux Seconded: Mr. Donnery Approved,
With a Roll Call Vote:**

Mr. Galu	-	Aye
Mr. Devereaux	-	Aye
Mr. Donnery	-	Aye
Mr. Doherty	-	Aye

MR. DOHERTY: Pertaining to this application, the first variance that we need to consider is:

Variance Requested	Zoning Requirement	Proposed Construction	Variance Required
Building Height	35 feet	38 feet	3 feet

MS. TERHUNE: I would just note for the Board that that is actually a reduction in the height variance that was granted prior which I think was 13 feet.

MR. DOHERTY: The next variance is: Gentlemen do you have the amended application?

MR. GAFFORD: Yes, they have the current one. This is the amended.

Variance Requested	Zoning Requirement	Proposed Construction	Variance Required
Abutting side yard	30 feet	1 foot	29 feet

MR. DOHERTY: Any questions? The next variance is:

Variance Requested	Zoning Requirement	Proposed Construction	Variance Required
Rear yard setback	30 feet	1 foot	29 feet

MR. DONNERY: It is just worrying me. What we are granting it's not off the property line?

MS. TERHUNE: It is off the District line.

MR. DONNERY: Someone could get confused and think the building is going right up to someone's property line.

MS. TERHUNE: Sure. I would have the applicant go over the wall heights on the plan so that the Board understands.

MR. DOHERTY: The next variance is the retaining wall. I will have Jack go over this for us.

MR. GAFFORD: The last time we did this we went to each section of the wall and found the maximum height. According to the way the computation goes, you take that maximum height and then on the side of the wall that's filled, the assumption was that we fill it to the top. You are taking the maximum height and zero height and averaging. We didn't feel that was really what you do. You probably have the height of the wall and you would fill up to about a foot from the top. Give yourself some leeway. So we used max height and one foot, add them together divided by two. That's why this table comes out with the variances that it does. If you look at Wall A – the max height is 9, we added one foot to it which is ten, and divide it by two and you get five feet. That is the proposed - this is this averaging. Since you're allowed eight, there was no variance needed. We are taking the max column adding one to it and dividing by two. Then comparing that with what's allowed. That gives you the variances that a required. I think in just about every case, they have dropped.

MR. DOHERTY: I want to go down the list.

- **Whether benefit can be achieved by other means feasible to applicant**

Variance Requested	Maximum Proposed Height	Average Proposed	Variance Required
Wall A	9 feet	5 feet	None requested
Wall B in the B2 Zone	19 feet	10 feet	2 feet
Wall B in the R3 Zone	20 feet	1.6 feet	4.5 feet
Wall C in the R3 Zone	13 feet	7 feet	1 foot

MS. TERHUNE: What is the date of this map?

MR. GETZ: June 30, 2015.

MS. TERHUNE: I am working on a June 2, 2015 one.

MR. GETZ: Gave a copy of the June 30, 2015 map to Ms. Terhune.

MR. DOHERTY: Gentlemen, any comments or questions on these variances?

MR. DONNERY: No.

MR. DOHERTY: I will go down the list for the Balancing Test.

- **Whether benefit can be achieved by other means feasible to applicant**

MR. DOHEERTY: Any questions or comments?

MR. DONNERY: I think the applicant, by making the changes that he did, relieved the some of stress on the area. I am very happy with that.

- **Undesirable change in the neighborhood character or to nearby properties**

MR. DOHERTY: The structure that is there now is pretty run down. Frank's house is very nicely kept, so I don't see that it could be undesirable for that neighborhood. It is on Route 9W – a commercial area.

- **Whether request is substantial**

MR. DOHERTY: It is.

MS. TERHUNE: But they have also lessened the height.

MR. DONNERY: Once again, it is substantial only because it is going in from one zone to another but not on the whole property.

MR. DOHERTY: And they have lessened that from the previous application.

MS. TERHUNE: The height.

- **Whether request will have adverse physical or environmental effects**

MR. DONNERY: They went through SEQRA and that is all fine. I have no problem with that.

- **Whether alleged difficulty is self-created**

MR. DEVEREAUX: Good question, but I think they are making the most of the land that they have and minimizing any problems for the surrounding area, in my estimation.

MR. DOHERTY: Any other questions? Before I ask for a motion, I would like to make a point. Whether this is approved or denied, should it be approved, this supersedes any approval from the Board on the previous application. Is everybody in agreement?

MR. DEVEREAUX: Supersedes, yes.

MR. DONNERY: Right. On the parking do we need any legal documents about the upcoming sale of the property?

MS. TERHUNE: If you approve, that would be a condition of the approval because otherwise they would need use variances. You would condition your approval on the purchase and inclusion of the Lilos' property into this plan.

MR. DONNERY: Once again, you will word that.

MR. GAFFORD: In a lot combination from the County.

MS. TERHUNE: Yes, I will word that. Yes, it is just like they did the first time around when they combined those three or four lots together.

MR. DONNERY: Right, but at that time they owned it, right now they don't own the other property. That's what I am getting at.

MS. TERHUNE: If they don't buy it...

MR. GAFFORD: You can't combine it if you don't buy it.

MR. DOHERTY: So if the purchase doesn't go through, then everything gets wiped.

MS. TERHUNE: They would probably need a parking variance then because they could not put parking on that other lot. They would have to figure something else out. They would be back, I assume. The other thing is, if you decide to go ahead with the approval tonight, you would note that they are going to modify the plans to show the size of the restaurant and to verify that there is no parking requirement needed. They would submit that to this Board and then go on to the Planning Board.

MR. DONNERY: We have never granted a variance to someone that doesn't own a piece of property yet.

MS. TERHUNE: Yes, and we wouldn't, but there is an affidavit from Mr. Lilos authorizing Mr. Gafford to represent him in this matter.

MR. GAFFORD: By giving us conditional approval, he makes it easy for me to take the next step.

MS. TERHUNE: If we didn't have an affidavit for that, we wouldn't be here.

MR. DOHERTY: Would anyone like to make a motion on this application?

MR. DEVEREAUX: I recommend approval of the variances requested. We just need one vote.

A motion was made to approve the requested variances for the project.

**Motion: Mr. Devereaux Seconded: Mr. Donnery Approved
With a Roll Call Vote:**

Mr. Galu	-	Aye
Mr. Devereaux	-	Aye
Mr. Donnery	-	Aye
Mr. Doherty	-	Aye

MS. TERHUNE: We are going to condition it on purchase, a combination of the lots, showing the restaurant size, and verify the parking. This is a Type II SEQRA Action.

MR. GAFFORD: Thank you.

MR. DOHERTY: Thank you and good luck to you.

Holiday Inn Express, 1106 Route 9W, Fort Montgomery, NY, Mr. Dilip Patel, Rakhil Patel.

MR. DOHERTY: We have before us Mr. Dilip Patel and Mr. Rakhil Patel of West Point Realty, commonly known as the Holiday Inn Express. Mr. Patel, would you describe for us what you want to do concerning this application.

MR. RAKHIL PATEL: The main purpose, obviously, is for the height variance on the existing structure. That is the main reason we are here today.

MR. DOHERTY: Is it just the height variance? The banquet hall?

MS. TERHUNE: That is an accessory use, as long as they have enough parking and it is setback appropriately. It is not marked. They would have to mark that. The only question that I have is, is this all one lot?

MR. RAKHIL PATEL: Yes.

MR. DILIP PATEL: It is actually three lots. This is one and this is all one. It is all owned by me.

MR. DOHERTY: It wasn't subdivided?

MR. DILIP PATEL: It is three separate lots owned by me.

MS. TERHUNE: I would have the same comment that I did for Old Guard which is you would need to combine those lots. Otherwise, this parking becomes the primary use and you would need a use variance. The only other thing that I would suggest is you want to make sure to mark the setbacks so the Board and you know whether you would need any other variances. Also the size of the structure.

MR. DOHERTY: John or Bruce from the Building Department can help you with the layout. I just want to be clear, we are just talking about putting the third floor on, not putting that other building in the lot.

MR. RAKHIL PATEL: Yes. It would be three stories existing which you see now, and adding the fourth floor for that portion of it.

MS. TERHUNE: And the new banquet hall. So you would give the Board all of the square footage for everything that you are proposing.

MR. DILIP PATEL: This is 10,070. Right here, it is on here.

MR. DOHERTY: I will ask the fire department to do the same review that they did on the other property, for safety reasons.

MR. DILIP PATEL: We have been told they can go up to 65.

MR. DOHERTY: Yes, but I want them to confirm.

MS. TERHUNE: Is the 20,000 square feet, is that the three story building now or does that also include the fourth floor.

MR. DILIP PATEL: That is with the swimming pool.

MR. DOHERTY: You are asking, is that the existing square footage?

MR. DILIP PATEL: Right.

MS. TERHUNE: What would the additional square footage be?

MR. DILIP PATEL: 250 by 62.

MS. TERHUNE: You will want to mark that.

MR. DOHERTY: On the application, the building height, it says zoning requirement is 35, the existing condition is 35, and the proposed construction is 42, variance required should say 7 feet.

MR. DONNERY: Right.

MS. TERHUNE: Also, the square footage for lots, because it is a hotel is 1,000 square feet per room.

MR. DILIP PATEL: Yes.

MR. DOHERTY: With your new floor you will have a total of 142, or you have a total 142 rooms now?

MR. RAKHIL PATEL: Now it is 86. On the main building and the banquet would match height wise.

MR. DONNERY: Rooms will be on the fourth floor as well.

MR. RAKHIL PATEL: You will visually see it. The banquet would take up two stories for height. **The plans were reviewed.**

MR. GALU AND MR. PATEL: Reviewed the plans.

MS. TERHUNE: This is all in B-2?

MR. RAKHIL PATEL: No, B-1.

MR. DOHERTY: B-1 or B-2?

MS. TERHUNE: You can ask John. They will find it.

MR. GALU: It only says B, there is no number.

MS. TERHUNE: It is just B. We will have to do a 239 Referral. I can send it out.

MR. DOHERTY: I will sign it and have Irene send it out.

MS. TERHUNE: Can you send PDF?

MR. DILIP PATEL: The drawing will be more sophisticated.

MS. TERHUNE: We have to refer this to the County. They have 30 days to get back to us. This Board cannot act until they get back to us. If the Board wants to expedite the County comments, I might be able to send them PDFs, if you can send me PDFs. I can say that a signed copy of the referral will be forthcoming, and I can at least get the process started.

MR. GALU: Why does this have to go through the County?

MS. TERHUNE: Because it is on Route 9W. You can't take any action until you hear from the County.

MR. DONNERY: It is also close to the Palisades Interstate Parkway on the other side of the street. Do we need something from them, again?

MR. DOHERTY: What do you mean by that, Tim?

MS. TERHUNE: You mean the Palisades Interstate Parkway?

MR. DONNERY: No, the Palisades Interstate Park Commission owns that piece of property across the street from them.

MS. TERHUNE: They should get a notice.

MR. DOHERTY: I did not know that. I thought it was part of Canterbury.

MR. DONNERY: Oh, yes it is. That is why nobody has ever built on it.

MR. DILIP PATEL: It is not owned by the State? I would like to ask this application should be revised?

MS. TERHUNE: This should be revised. I will check the Zoning Code.

MR. DEVEREAUX: We were just discussing the lot area. The lot area now is 3 parcels. Should they assemble those lots prior to moving on. I am not sure.

MS. TERHUNE: The lot area that you show, is that for all three areas?

MR. DILIP PATEL: No, only for the one.

MS. TERHUNE: You own those lots?

MR. PATEL: Yes.

MR. TERHUNE: You might want to do is what Old Guard did. All you have to do is send a letter to the County and ask them to combine those lots. Show that to the ZBA so that they know that you requested that. They will do it. Then you will have to go to the Town Planning Board.

MR. PATEL: For a special exception? This was all one lot originally. Then we subdivided because we were expecting a restaurant or someone else to use it. As time passed, no one came. Now, because of the different need, we thought we would put a banquet hall and the parking lot.

MS. TERHUNE: You would ask the County to combine the lots. If this Board grants the variance and you go to get your building permits, the Building Inspector will advise you as to whether you now have to go to the Town Planning Board or not. If you were in the Village, because I am the Village Planning Board Attorney, I would say yes because it is a special exception use, and it is probably the same in the Town.

In Special Uses for hotels and motels, it is 1,000 square feet per guest. You would modify this to show how many you have there, 14,200. That would be the minimum. You have much more than that. The parking requirement would be one per guest room, plus one for two employees for the hotel. For a place of public assembly it is one for three permanent seats or one for 40 square feet. Work on the 40 square feet and add that to the parking requirement.

MR. DOPHERTY: Seating arrangements are not permanent.

MS. TERHUNE: It needs to be shown on the plans.

A discussion was held on the parking requirements and how they should be shown on the final plans.

MR. DEVEREAUX: These two gentlemen are very bright I know, but can you synthesize what you have been discussing and let them know precisely what this requires. I don't mean right now.

MS. TERHUNE: Yes, I can write up comments. I will send it to the Chairman, he will then send it to the Board and he will send it to you. I will also let you know what you need for the 239 Referral. The only thing is it may delay the 239 Referral.

MR. PATEL: That is perfect.

MS. TERHUNE: I will be happy to do that.

MR. DOHERTY: Our next meeting is August 17, 2015.

MR. PATEL: By that time, I will submit the information.

MS. TERHUNE: You can set the Public Hearing as long as the applicant can make the changes prior to.

MR. PATEL: Could you include to whom I should send the letter to the County and the address.

MS. TERHUNE: Yes.

MR. DOHERTY: The next scheduled meeting is set for August 17, 2015. Tony informed me that he won't be here. My concern is there will be three of us. Is there any objection to hold the meeting on August 24, 2015, the following Monday? I will check with everyone and let you know.

MS. TERHUNE: I will be available August 24, 2015.

MR. DOHERTY: I will notice the change in the meeting

A motion was made to set a Public Hearing for August 24, 2015 for this application.

Motion: Mr. Donnery Seconded: Mr. Doherty Approved

MR. RAKHIL PATEL: I will submit modified plans and information to the Chairman.

At 8:55 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Donnery Seconded: Mr. Galu Approved

Respectfully submitted,

Fran DeWitt, Recording Secretary

**The next Consolidated Zoning Board of Appeals
meeting is Monday, August 24, 2015**